

IN THE
Supreme Court of the United States

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MICHAEL RODAK, JR., CLERK

October Term, 1977
No. 77-1378

JAPAN LINE, LTD.; KAWASAKI KISEN KAISHA, LTD.;
MITSUI O.S.K. LINES, LTD.; NIPPON YUSEN KAISHA;
SHOWA LINE, LTD.; and YAMASHITA-SHINNIHON
STEAMSHIP Co., LTD.,

Appellants,

vs.

COUNTY OF LOS ANGELES; CITY OF LOS ANGELES; and
CITY OF LONG BEACH,

Appellees.

On Appeal From the Supreme Court of the State of California.

APPELLEES' SUPPLEMENTAL BRIEF.

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Introduction.

This Supplemental Brief on behalf of the Appellees is meant to discuss an opinion by the California Court of Appeal in *Zee Toys, et al., v. County of Los Angeles*, 2d Civ. Nos. 52977 and 53695 and *Sears, Roebuck & Co. v. County of Los Angeles*, 2d Civ. No. 53306, consolidated for appeal and hereinafter referred to as *Zee Toys*. That opinion is published at 85 Cal.App. 3d 763, 149 Cal.Rptr. 750. Although filed by the Appellate Court on October 25th, it was not received until October 30th.

The Case.

Zee Toys involves a tax statute which makes tax distinctions between goods traveling in foreign commerce and those traveling in interstate commerce (as well as other distinctions between types of foreign commerce). The exemption in favor of foreign goods on their way to other states was perceived as aiding California's importing industry. The Court, nevertheless, saw the regulatory effect of such legislation, and struck down the exemption, relying on *Boston Stock Exchange v. State Tax Comm.*, 429 U.S. 318 (1977). The Appellate Court, in *Zee Toys*, did not conceive of the imposition of uniform property taxes as regulatory, and in fact, resolved the problem by striking the exemption rather than expanding it. At the same time the Court had before it many of the devices of Federal regulation, including tariff preferences and "penalties" for various goods.

The place of the States in the Federal regulation of commerce is clear from this case: Federal regulation can take place at the same time the States apply uniform taxation.

Thus, as pointed out in the Amicus Curiae Brief for the City of Houston, Texas, a State tax is subject to preemption by Federal regulations if it is regulatory. But nonregulatory taxes cannot be cancelled by Federal regulations of commerce. *Cooley v. Board of Port Wardens*, 53 U.S. 299 (1851) at p. 319:

"... that it is not the mere existence of such a power, but its exercise by Congress, which may be incompatible with the exercise of the same power by the States ..."

While admitting the possibility of the Federal Government's taxing a thing to such an extent as to preclude the States from taxing the same thing, The Federalist No. 32 (Hamilton) states:

"... that an attempt on the part of the national government to abridge them in the exercise of [the taxing power] would be a violent assumption of power, unwarranted by any article or clause of its Constitution." (Tudor Pub. Co. version (1947) at p. 206).

Conclusion.

The California Appellate Court opinion is subject to review. It, nevertheless, shows that in the Court's opinion, the States have an obligation not to regulate foreign commerce in the same way that they may not regulate interstate commerce. On the other hand, a nondiscriminatory property tax is not regulatory. It provides funds for the many services provided by State and local governments which support the ability of the Appellants and all businessmen to engage in profit-making enterprises here.

To allege that only some fire and police protection should be supported by certain businesses does not help the Federal regulation of commerce. It casts upon foreign businesses of other types, and upon domestic businesses and residents, the burden of providing all of the other services provided to the Appellants and other businesses alike. Our Government has, for generations, been a leader in establishing equality for foreign enterprises and persons in this country. They deserve that equality. But to oblige our own businesses and residents to underwrite foreign enterprise ignores that

Government's obligation to treat its own people with the same impartiality which is a goal of our Judeo-Christian heritage as well as our Constitution.

Zee Toys recognizes that obligation.

Respectfully submitted,

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JAMES DEXTER CLARK,
Deputy County Counsel,
Counsel for Appellees.

Service of the within and receipt of a copy
thereof is hereby admitted this day
of December, A.D. 1978.
